

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kate Ortigoza	Team: Squad #04	CCRB Case #: 202300182	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/07/2023 9:44 PM	Location of Incident: Parsons/Archer MTA Platform Station, Inside E train	18 Mo. SOL 7/7/2024	Precinct:		
Date/Time CV Reported Sat, 01/07/2023 10:50 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 01/07/2023 10:50 PM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. PO Mohamedzaid Palbalkar	09181	973133	104 PCT		
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>		
1. PO Frank Nicacci	14443	971582	104 PCT		
<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>			
A . PO Mohamedzaid Palbalkar	Abuse: Police Officer Mohamedzaid Palbalkar took a recording of individuals.				
B . PO Mohamedzaid Palbalkar	Discourtesy: Police Officer Mohamedzaid Palbalkar spoke discourteously about individuals.				
C . PO Mohamedzaid Palbalkar	Off. Language: Police Officer Mohamedzaid Palbalkar made offensive remarks about individuals.				

### Case Summary

On January 7, 2023, § 87(2)(b) submitted this complaint via the Civilian Complaint Review Board's website regarding an Instagram video story that she watched involving unidentified homeless individuals.

On January 7, 2023, at approximately 9:44 PM, Police Officer Mohamedzaid Palbalkar and Police Officer Frank Nicacci, from the 104<sup>th</sup> Precinct, were riding on the E train on Parsons/Archer MTA Platform Station in Queens. PO Palbalkar posted a 5-second video recording on his Instagram story of himself, PO Nicacci, and homeless individuals who were sleeping on the train (**Allegation A: Abuse of Authority-** § 87(2)(g) PO Palbalkar wrote the caption, "Join the NYPD, you can ride with bums too § 87(2)(b) (**Allegation B: Discourtesy-** § 87(2)(g) **Allegation C: Offensive Language-** § 87(2)(g)

No arrests or summons resulted from this incident.

The investigation obtained video footage from Officer Palbalkar's personal device, linked to IA #5 (**Board Review 01**), and summarized in IA #15 (**Board Review 02**).

CCRB Case number 202301707 was generated as an IAB Spinoff to address PO Palbalkar using his personal phone while working on duty.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Mohamedzaid Palbalkar took a recording of individuals.**

**Allegation (B) Discourtesy: Police Officer Mohamedzaid Palbalkar spoke discourteously about individuals.**

**Allegation (C) Offensive Language: Police Officer Mohamedzaid Palbalkar made offensive remarks about individuals.**

It is undisputed that PO Palbalkar used his personal device to record unidentified homeless individuals on the train and used the caption, "Join the NYPD, you can ride with bums too § 87(2)(b) on his Instagram story post.

PO Palbalkar testified (**Board Review 03**) that he was working transit overtime with PO Nicacci on the E train. There were about three individuals sleeping on the train seats and spread throughout the train car. PO Palbalkar had no interaction with any of these individuals. PO Palbalkar used his personal phone and filmed himself and PO Nicacci, and then pointed the camera towards the individuals. PO Palbalkar stated that the purpose of filming himself and PO Nicacci was to post it to his Instagram. PO Palbalkar used the Instagram caption, "Join the NYPD, you can ride with bums too," because "of the conditions of the subway train." PO Palbalkar clarified that the conditions of the train were due to the homeless individuals sleeping on the train. PO Palbalkar explained that the usage of the word "bums" referred to himself, PO Nicacci, and the three individuals on the train. PO Palbalkar added that it was "a stupid video that I took and should have never posted it. There is no explanation around it."

A request was sent to the NYPD Legal Bureau for all photos and videos taken on PO Palbalkar's department phone during his tour on the date of the incident. PO Palbalkar's department phone was physically inspected for photographs and videos and yielded negative results (**Board Review 05**).

**Patrol Guide Procedure 206-03 (Board Review 04)** states that using a personal electronic device while performing duties during tour is not allowed except on authorized meal, in the event of an emergency, or as directed by competent authority. Additionally, a personal cellular phone shall not be used to conduct official Department business, except under exigent circumstances. The personal cellular phone must be carried in a concealed manner that does not interfere with authorized equipment.

**Patrol Guide Procedure 200-02 (Board Review 06)** states that officers must “render [their] services with courtesy and civility,” and that they must, “maintain a higher standard of integrity than is generally expected of others.”

Under PD v. Pichardo, DCT Case Number 2015-15012, **(Board Review 07)**, officers may not use profanity that is intended only to insult or belittle a civilian.

PO Palbalkar admitted that he used his personal device to record this incident and did not cite any exigent circumstances for doing so. § 87(2)(g)

The video footage and Officer Palbalkar’s testimony confirms that Officer Palbalkar used the word “bums” and directed this term towards the individuals on the train. § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 08)**.
- Officer Palbalkar has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject **(Board Review 09)**.

#### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) filed this complaint but did not leave any contact information to conduct an interview. This complaint was therefore investigated.
- On February 17, 2023, a FOIL request for a Notice of Claim pertaining to this incident was submitted to the New York City Office of the Comptroller. Any response will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 4

Investigator:	<u>Kate Ortigoza</u>	<u>Kate Ortigoza</u>	<u>02/28/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>02/28/2023</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date